

AMENDED IN ASSEMBLY JANUARY 7, 2008

AMENDED IN ASSEMBLY JUNE 25, 2007

AMENDED IN ASSEMBLY JUNE 12, 2007

AMENDED IN ASSEMBLY MAY 16, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1527

Introduced by Assembly Member Arambula

February 23, 2007

An act to add and repeal Sections 17052.13, 17052.14, 23613, and 23614 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1527, as amended, Arambula. Income and corporation taxes: credits: California Cleantech Advantage Act of 2008.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including, by reference to a specified federal statute, a credit against taxes imposed by those laws for increasing research expenses, as defined.

This bill would authorize a credit against those taxes, in lieu of the credit currently authorized for qualified research and the transferable credit described below, for each taxable year beginning on or after January 1, 2009, and before January 1, 2013, in an amount equal to 20% of the qualified amount, as defined, paid or incurred by a qualified taxpayer for qualified research in California, as defined, related to cleantech industries. This bill would also authorize an alternative credit against those taxes for each taxable year beginning on or after January

1, 2009, and before January 1, 2013, in an amount equal to 10% of the qualified amount, as defined, paid or incurred by a qualified taxpayer for qualified research in California, as defined, related to cleantech industries. This bill would allow any unused credits allowed to a qualified taxpayer under the 2nd alternative credit to be sold to, and used by, a qualified buyer, as defined, subject to specified conditions.

This bill would require specified information to be filed under penalty of perjury, thus imposing a state-mandated local program by expanding the scope of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 California Cleantech Advantage Act of 2008.

3 SEC. 2. (a) The Legislature finds and declares:

4 (1) That the enactment of Assembly Bill 32 (Chapter 488,
5 Statutes of 2006) made California a national and global policy
6 leader in the effort to reduce greenhouse gases that pose serious
7 threats to our natural environment and to our residents' health and
8 safety.

9 (2) That the prospect of global warming is very real and may
10 already be impacting our climate and ecosystems.

11 (3) That there is an urgent need to develop, market, and use
12 products, equipment, and services that reduce the formation of
13 greenhouse gases.

14 (b) The Legislature further finds and declares:

15 (1) That the level of national and global concern over greenhouse
16 gas emissions has begun to focus American technological research
17 and investment on developing industrial and consumer products
18 and processes that produce zero or ultra-low emissions of carbon
19 dioxide, the primary greenhouse gas.

1 (2) Nationally, in 2006, as much as \$63 billion was invested in
2 clean technologies, also called “cleantech.”

3 (3) California received only 31 percent of venture capital
4 invested nationally in cleantech, as compared to 63 percent of the
5 nation’s venture capital invested in the computer industry.

6 (c) The Legislature further finds and declares:

7 (1) It is in the best interest of this state to expeditiously foster
8 a competitive cleantech industry in California by offering investors
9 financial incentives to spur cleantech research and development,
10 production, and utilization of environmentally clean products.

11 (2) That growing cleantech investment will help create as many
12 as 114,000 new, high-paying, skilled jobs, improve the state’s air
13 and water quality, and offer business reliable and affordable sources
14 of alternative energy.

15 (d) Therefore, it is the intent of the Legislature to enact and
16 enhance targeted tax credits to increase investment in cleantech
17 activities and the production of environmentally clean
18 manufacturing equipment, as well as maintain and enhance this
19 state’s competitive lead in attracting investment capital, clean
20 industry, and high-paying, skilled jobs.

21 SEC. 3. Section 17052.13 is added to the Revenue and Taxation
22 Code, to read:

23 17052.13. (a) (1) For each taxable year beginning on or after
24 January 1, 2009, and before January 1, 2013, there shall be allowed
25 to a qualified taxpayer as a credit against the “net tax,” as defined
26 by Section 17039, an amount equal to 20 percent of the qualified
27 amount.

28 (2) The credit allowed under this section shall be claimed by a
29 qualified taxpayer by making an irrevocable election to claim this
30 credit in lieu of the credit otherwise allowed pursuant to Section
31 17052.12 or Section 17052.14.

32 (b) For purposes of this section:

33 (1) “Cleantech” means technologies identified by the California
34 ~~Council on Science and Technology~~ *Alternative Energy and*
35 *Advanced Transportation Financing Authority*, the implementation
36 of which result in cleaner air and water, encourage the reuse of
37 materials, and result in reductions of emissions of greenhouse
38 gases, as that term is defined in subdivision (g) of Section 38505
39 of the Health and Safety Code, including, but not limited to, wind,
40 solar, biomass, and hydrogen technologies.

1 (2) “Qualified amount” means an amount determined in
 2 accordance with Section 41 of the Internal Revenue Code, except:
 3 (A) Qualified research shall include only research conducted
 4 in this state.
 5 (B) Section 41(a)(2) and Section 41(a)(3) of the Internal
 6 Revenue Code shall not apply.
 7 (3) “Qualified research” means research certified by the
 8 ~~California Council on Science and Technology~~ *Alternative Energy*
 9 *and Advanced Transportation Financing Authority* as cleantech
 10 research, except that “qualified research” expenses include only
 11 expenses for in-house research, within the meaning of Section
 12 41(b)(2) of the Internal Revenue Code.
 13 (4) (A) “Qualified taxpayer” means any taxpayer who, for the
 14 taxable year, has received the certification described in subdivision
 15 (e) from the ~~California Council on Science and Technology~~
 16 *Alternative Energy and Advanced Transportation Financing*
 17 *Authority* and otherwise satisfies the requirements of this section.
 18 (B) A “qualified taxpayer” must be a business that has its
 19 principal office located in California, the officers of which are
 20 domiciled in California, and that, together with affiliates, has 100
 21 or fewer employees, and average annual gross receipts of ten
 22 million dollars (\$10,000,000) or less over the previous three taxable
 23 years.
 24 (C) In the case of any passthrough entity, the determination of
 25 whether a taxpayer is a qualified taxpayer under this section shall
 26 be made at the entity level and any credit under this section is not
 27 allowed to the passthrough entity, but shall be passed through to
 28 the partners or shareholders in accordance with applicable
 29 provisions of Part 10 (commencing with Section 17001) or Part
 30 11 (commencing with Section 23001). For purposes of this
 31 paragraph, “passthrough entity” means any entity taxed as a
 32 partnership or “S” corporation.
 33 (c) Section 41 of the Internal Revenue Code shall apply, and is
 34 modified as follows:
 35 (1) The provisions of Section 41(c)(4) of the Internal Revenue
 36 Code, relating to the election to use an alternate incremental credit,
 37 shall not apply.
 38 (2) Section 41(c)(7) of the Internal Revenue Code, relating to
 39 gross receipts, is modified to take into account only those gross
 40 receipts from the sale of property held primarily for sale to

1 customers in the ordinary course of the taxpayer's trade or business
2 that is delivered or shipped to a purchaser within this state,
3 regardless of freight on board point or any other condition of the
4 sale.

5 (3) Section 41(g) of the Internal Revenue Code, relating to
6 special rule for passthrough of credit, is modified by each of the
7 following:

8 (A) The last sentence shall not apply.

9 (B) If the amount determined under Section 41(a) of the Internal
10 Revenue Code for any taxable year exceeds the limitation of
11 Section 41(g) of the Internal Revenue Code, that amount may be
12 carried over to other taxable years under the rules of subdivision
13 (g), except that the limitation of Section 41(g) of the Internal
14 Revenue Code shall be taken into account in each subsequent
15 taxable year.

16 (4) Section 41(h) of the Internal Revenue Code, relating to
17 termination, shall not apply.

18 (d) In order to be eligible for the credit allowed under this
19 section, the qualified taxpayer shall do all of the following:

20 (1) (A) File an application for certification with the California
21 ~~Council on Science and Technology~~ *Alternative Energy and*
22 *Advanced Transportation Financing Authority*, in the form and
23 manner as prescribed by the California ~~Council on Science and~~
24 ~~Technology~~ *Alternative Energy and Advanced Transportation*
25 *Financing Authority*, that the taxpayer's research or planned
26 research is cleantech research.

27 (B) The application for certification of cleantech research under
28 subparagraph (A) must be filed with the California ~~Council on~~
29 ~~Science and Technology~~ *Alternative Energy and Advanced*
30 *Transportation Financing Authority* before the close of the taxable
31 year for which the credit allowed pursuant to this section will be
32 claimed.

33 (2) Maintain and provide, upon request by the Franchise Tax
34 Board, a copy of the application for certification and accompanying
35 materials provided to the California ~~Council on Science and~~
36 ~~Technology~~ *Alternative Energy and Advanced Transportation*
37 *Financing Authority*, along with substantiation, by adequate books
38 and records, or by sufficient corroborating evidence, that the
39 qualified research expenses on which the credit was calculated

1 were actually paid or incurred in the amount claimed, and that the
2 qualified research was performed in California.

3 (3) Provide a copy of the certification issued by the California
4 ~~Council on Science and Technology~~ *Alternative Energy and*
5 *Advanced Transportation Financing Authority*, as specified in
6 subdivision (e), upon request, to the Franchise Tax Board. If the
7 qualified taxpayer fails to provide the Franchise Tax Board with
8 a copy of the certification, the credit shall be disallowed and any
9 additional tax shall be assessed and collected pursuant to Section
10 19051.

11 (e) The ~~California Council on Science and Technology~~
12 *Alternative Energy and Advanced Transportation Financing*
13 *Authority* shall do all of the following:

14 (1) Establish a procedure for qualified taxpayers to file with the
15 ~~California Council on Science and Technology~~ *Alternative Energy*
16 *and Advanced Transportation Financing Authority* a written
17 application, on a form jointly prescribed by the ~~California Council~~
18 ~~on Science and Technology~~ *Alternative Energy and Advanced*
19 *Transportation Financing Authority* and the Franchise Tax Board,
20 for certification of cleantech research. The application shall be
21 filed under penalty of perjury and shall include, but not be limited
22 to, the following information:

23 (A) A written plan of research to be conducted or documentation
24 of ongoing research.

25 (B) An application fee.

26 (C) Any other information deemed relevant by the California
27 ~~Council on Science and Technology~~ *Alternative Energy and*
28 *Advanced Transportation Financing Authority*.

29 (2) Determine and provide certification to applicants meeting
30 the requirements of this section.

31 (3) Process and approve, or reject, all applications for
32 certification.

33 (4) No later than December 31, 2008, the ~~California Council~~
34 ~~on Science and Technology~~ *Alternative Energy and Advanced*
35 *Transportation Financing Authority* shall promulgate rules and
36 regulations necessary to establish procedures, processes,
37 requirements, and rules identified in or required to implement this
38 section. Rules and regulations may be adopted on an emergency
39 basis if necessary to meet the December 31, 2008, deadline. *The*
40 *California Alternative Energy and Advanced Transportation*

1 *Financing Authority may amend these rules and regulations as*
2 *necessary. The California Council on Science and Technology*
3 *Alternative Energy and Advanced Transportation Financing*
4 *Authority may adopt rules and regulations to more narrowly define*
5 *the terms listed in subdivision (b) to limit their meaning, but may*
6 *not expand the definition of any terms defined in subdivision (b).*

7 (5) Provide a list, at least annually, to the Franchise Tax Board,
8 in the form and manner agreed upon by the Franchise Tax Board,
9 of the names, taxpayer identification numbers, including taxpayer
10 identification numbers of each partner or shareholder, as applicable,
11 of approved applicants for certification pursuant to this section.

12 (6) Provide, upon request from a taxpayer, a copy of a
13 certification previously issued to that taxpayer, if any.

14 (7) Identify and publish a list of technologies that comprise
15 cleantech research.

16 (f) (1) The election described in subdivision (a) shall be made
17 on or included with the timely filed original return of the qualified
18 taxpayer, and shall be irrevocable once made.

19 (2) No other credit or deduction may be allowed for the same
20 expenses upon which the credit provided for in subdivision (a) is
21 allowed.

22 (g) In the case where the credit allowed under this section
23 exceeds the “net tax,” the excess may be carried over to reduce
24 the “net tax” in the following year, and the succeeding eight years
25 if necessary, until the credit has been exhausted.

26 (h) *The California Alternative Energy and Advanced*
27 *Transportation Financing Authority may confer and consult with*
28 *any other state agencies, boards, commissions, departments, and*
29 *authorities as necessary to implement this section.*

30 ~~(h)~~

31 (i) This section shall remain in effect only until December 1,
32 2013, and as of that date is repealed.

33 SEC. 4. Section 17052.14 is added to the Revenue and Taxation
34 Code, to read:

35 17052.14. (a) (1) For each taxable year beginning on or after
36 January 1, 2009, and before January 1, 2013, there shall be allowed
37 to a qualified taxpayer as a credit against the “net tax,” as defined
38 by Section 17039, an amount equal to 10 percent of the qualified
39 amount, to the extent of a final allocation in accordance with this
40 section.

1 (2) A claim for the credit allowed pursuant to this section shall
 2 be an election to claim this credit in lieu of the credit allowed
 3 pursuant to Section 17052.12 or Section 17052.13.

4 (b) For purposes of this section:

5 (1) “Budget” means an estimate of all expenses expected to be
 6 paid or incurred during the taxable year by the qualified taxpayer
 7 for all qualified research purposes.

8 (2) “Cleantech” means technologies identified by the California
 9 ~~Council on Science and Technology~~ *Alternative Energy and*
 10 *Advanced Transportation Financing Authority*, the implementation
 11 of which result in cleaner air and water, encourage the reuse of
 12 materials, and result in reductions of emissions of greenhouse
 13 gases, as that term is defined in subdivision (g) of Section 38505
 14 of the Health and Safety Code, including, but not limited to, wind,
 15 solar, biomass, and hydrogen technologies.

16 (3) (A) “Qualified amount” means an amount determined in
 17 accordance with Section 41 of the Internal Revenue Code, for
 18 qualified research conducted in this state.

19 (B) Paragraphs (2) and (3) of subdivision (a) of Section 41 of
 20 the Internal Revenue Code shall not apply in computing the
 21 qualified amount.

22 (4) (A) “Qualified research” means research certified by the
 23 ~~California Council on Science and Technology~~ *Alternative Energy*
 24 *and Advanced Transportation Financing Authority* as cleantech
 25 research, except that “qualified research” expenses include only
 26 expenses for in-house research, within the meaning of Section
 27 41(b)(2) of the Internal Revenue Code, performed by employees
 28 of the qualified taxpayer and do not include contract research
 29 expenses, within the meaning of Section 41(b)(3) of the Internal
 30 Revenue Code.

31 (B) In order to receive an allocation of credit under this section
 32 the following conditions shall also be satisfied:

33 (i) The qualified taxpayer shall have a minimum budget of three
 34 hundred thousand dollars (\$300,000) for qualified research.

35 (ii) The actual expenses for qualified research conducted during
 36 the qualified taxpayer’s taxable year must meet or satisfy the
 37 minimum budget amount required by clause (i) at the time of
 38 application to the ~~California Council on Science and Technology~~
 39 *Alternative Energy and Advanced Transportation Financing*
 40 *Authority* for a final allocation.

1 (5) (A) “Qualified taxpayer” means a taxpayer who, for the
2 taxable year, has received a final allocation of credit from the
3 California ~~Council on Science and Technology~~ *Alternative Energy*
4 *and Advanced Transportation Financing Authority* pursuant to
5 subdivision (e) and who otherwise satisfies the requirements of
6 this section.

7 (B) A qualified taxpayer must be a business that has its principal
8 office located in California, the officers of which are domiciled in
9 California, and that, together with affiliates, has 100 or fewer
10 employees, and average annual gross receipts of ten million dollars
11 (\$10,000,000) or less over the previous three taxable years.

12 (C) In the case of any passthrough entity, the determination of
13 whether a taxpayer is a qualified taxpayer under this section shall
14 be made at the entity level and any credit under this section is not
15 allowed to the passthrough entity, but shall be passed through to
16 the partners or shareholders in accordance with applicable
17 provisions of Part 10 (commencing with Section 17001) or Part
18 11 (commencing with Section 23001). For purposes of this
19 paragraph, “passthrough entity” means any entity taxed as a
20 partnership or “S” corporation.

21 (6) “Unused credit” means an amount of tax credit reflected in
22 a final allocation to a qualified taxpayer pursuant to this section
23 that has not been applied to reduce the “net tax,” as defined by
24 Section 17039, in any taxable year.

25 (c) Section 41 of the Internal Revenue Code shall apply, and is
26 modified as follows:

27 (1) The provisions of Section 41(c)(4) of the Internal Revenue
28 Code, relating to the election to use an alternate incremental credit,
29 shall not apply.

30 (2) Section 41(c)(7) of the Internal Revenue Code, relating to
31 gross receipts, is modified to take into account only those gross
32 receipts from the sale of property held primarily for sale to
33 customers in the ordinary course of the taxpayer’s trade or business
34 that is delivered or shipped to a purchaser within this state,
35 regardless of freight on board point or any other condition of the
36 sale.

37 (3) Section 41(g) of the Internal Revenue Code, relating to
38 special rule for passthrough of credit, is modified by each of the
39 following:

40 (A) The last sentence shall not apply.

1 (B) If the amount determined under Section 41(a) of the Internal
 2 Revenue Code for any taxable year exceeds the limitation of
 3 Section 41(g) of the Internal Revenue Code, that amount may be
 4 carried over to other taxable years under the rules of subdivision
 5 (j) except that the limitation of Section 41(g) of the Internal
 6 Revenue Code shall be taken into account in each subsequent
 7 taxable year.

8 (4) Section 41(h) of the Internal Revenue Code, relating to
 9 termination, shall not apply.

10 (d) In order to be eligible for the credit authorized by this
 11 section, the qualified taxpayer shall do all of the following:

12 (1) (A) File an application for preliminary allocation of the tax
 13 credit with the ~~California Council on Science and Technology~~
 14 *Alternative Energy and Advanced Transportation Financing*
 15 *Authority*, in the form and manner as prescribed by the California
 16 ~~Council on Science and Technology~~ *Alternative Energy and*
 17 *Advanced Transportation Financing Authority*, for allocation of
 18 credit.

19 (B) The application for allocation of credit referenced in
 20 subparagraph (A) must be filed with the ~~California Council on~~
 21 ~~Science and Technology~~ *Alternative Energy and Advanced*
 22 *Transportation Financing Authority* before the close of the taxable
 23 year for which the credit allowed pursuant to this section will be
 24 claimed.

25 (2) Within 90 days of the end of the taxpayer's taxable year,
 26 file an application with the ~~California Council on Science and~~
 27 ~~Technology~~ *Alternative Energy and Advanced Transportation*
 28 *Financing Authority* for final allocation of the credit based upon
 29 the taxpayer's conduct of qualified research during the taxable
 30 year.

31 (3) File an application with the ~~California Council on Science~~
 32 ~~and Technology~~ *Alternative Energy and Advanced Transportation*
 33 *Financing Authority* for certification of the amount of unused credit
 34 which may be sold pursuant to subdivision (h).

35 (4) Provide the ~~California Council on Science and Technology~~
 36 *Alternative Energy and Advanced Transportation Financing*
 37 *Authority* with substantiation, by adequate books and records, or
 38 by sufficient corroborating evidence, that the qualified research
 39 expenses on which the credit was calculated were actually paid or

1 incurred in the amount claimed, and that the qualified research
2 was performed in California.

3 (e) ~~The California Council on Science and Technology~~
4 *Alternative Energy and Advanced Transportation Financing*
5 *Authority* shall do all of the following:

6 (1) (A) Establish procedures for qualified taxpayers to file with
7 ~~the California Council on Science and Technology~~ *Alternative*
8 *Energy and Advanced Transportation Financing Authority* a
9 written application, on a form jointly prescribed by the California
10 ~~Council on Science and Technology~~ *Alternative Energy and*
11 *Advanced Transportation Financing Authority* and the Franchise
12 Tax Board, for the following purposes:

13 (i) Certification of cleantech research.

14 (ii) Preliminary allocation of credit.

15 (iii) Final allocation of credit.

16 (iv) Certification of the amount of credit for sale pursuant to
17 subdivision (h).

18 (B) The applications identified in subparagraph (A) shall be
19 filed under penalty of perjury. The application for certification and
20 allocation of credit shall include, but not be limited to, the
21 following information:

22 (i) A written budget and plan for qualified research to be
23 conducted, along with documentation of any ongoing research that
24 may be determined to be qualified research.

25 (ii) An application fee.

26 (iii) Any other information deemed relevant by the California
27 ~~Council on Science and Technology~~ *Alternative Energy and*
28 *Advanced Transportation Financing Authority*.

29 (2) Allocate tax credits to qualified taxpayers, subject to the
30 aggregate allocation limits in subdivision (f), and which shall not
31 exceed the lesser of any of the following:

32 (A) The amount of the credit preliminarily allocated to the
33 qualified taxpayer by the California ~~Council on Science and~~
34 ~~Technology~~ *Alternative Energy and Advanced Transportation*
35 *Financing Authority* based on the initial application for preliminary
36 allocation of the tax credit.

37 (B) The amount of the credit calculated based on the actual costs
38 of qualified research.

39 (C) One million dollars (\$1,000,000) per qualified taxpayer per
40 qualified year.

- 1 (3) Determine and provide certification of the amount of unused
 2 credit available for sale pursuant to subdivision (h).
- 3 (4) (A) Accept and evaluate applications for certification and
 4 allocation. If the aggregate amount of tax credit applications
 5 exceeds the amount of credit available for allocation, credit shall
 6 be allocated on a first-come-first-served basis as determined by
 7 the order in which complete, approved applications for allocation
 8 are received.
- 9 (B) No certifications or allocations of credit may be made for
 10 activity conducted in a calendar year prior to the calendar year in
 11 which an application for certification and allocation is made.
- 12 (5) Issue a certificate to the qualified taxpayer setting forth the
 13 name of the qualified taxpayer and the total amount of the tax
 14 credit allocated to the qualified taxpayer.
- 15 (6) Issue a certificate to the qualified taxpayer setting forth the
 16 name of the qualified taxpayer and the total amount of unused
 17 credit available for sale pursuant to subdivision (h).
- 18 (7) (A) No later than December ~~1~~, 31, 2008, the California
 19 ~~Council on Science and Technology~~ *Alternative Energy and*
 20 *Advanced Transportation Financing Authority* shall promulgate
 21 rules and regulations necessary to establish procedures, processes,
 22 requirements, and rules identified in or required to implement this
 23 section. Rules and regulations may be adopted on an emergency
 24 basis if necessary to meet the December ~~1~~, 31, 2008, deadline. The
 25 California ~~Council on Science and Technology~~ *Alternative Energy*
 26 *and Advanced Transportation Financing Authority* may amend
 27 these rules and regulations as necessary. The California ~~Council~~
 28 ~~on Science and Technology~~ *Alternative Energy and Advanced*
 29 *Transportation Financing Authority* may adopt rules and
 30 regulations to more narrowly define the terms listed in subdivision
 31 (b) to limit their meaning, but may not expand the definition of
 32 any terms defined in subdivision (b).
- 33 (B) Develop guidelines, in consultation with the Franchise Tax
 34 Board, for review of applications for final confirmation and of
 35 credit allocations supporting materials in a manner consistent with
 36 generally accepted accounting principles.
- 37 (8) Provide a list, at least annually, to the Franchise Tax Board,
 38 in the form and manner agreed upon by the Franchise Tax Board,
 39 information including, but not limited to, the following:

1 (A) The names, taxpayer identification numbers, including
2 taxpayer identification numbers of each partner or shareholder, as
3 applicable, of approved applicants for allocation of credit pursuant
4 to this section.

5 (B) The amount of final credit allocation.

6 (C) The amount of unused credit certified for sale pursuant to
7 subdivision (h).

8 (f) The aggregate amount of credits that may be allocated in
9 any calendar year pursuant to this section and Section 23614 shall
10 be an amount not to exceed the sum of all of the following:

11 (1) Twelve million five hundred thousand dollars (\$12,500,000)
12 for each calendar quarter.

13 (2) The unallocated credit, if any, for the preceding calendar
14 quarter.

15 (g) No other credit or deduction may be allowed for the same
16 expenses upon which the credit provided for in subdivision (a) is
17 allowed.

18 (h) (1) Notwithstanding any provisions of law to the contrary,
19 and except as otherwise provided in this section, a qualified
20 taxpayer may elect to sell unused credits to a buyer to claim against
21 its “net tax,” as defined by Section 17039, or its “tax,” as defined
22 in Section 23036, as the case may be, in any taxable year.

23 (2) (A) The amount of the unused credit that may be sold by a
24 qualified taxpayer shall be certified by the ~~California Council on~~
25 ~~Science and Technology~~ *Alternative Energy and Advanced*
26 *Transportation Financing Authority* prior to sale.

27 (B) In any case where an unused credit has been sold under the
28 authority of this subdivision, the qualified taxpayer shall reduce
29 the amount of its unused credit by the face amount of the unused
30 credits sold, and the amount of that reduction shall not be available
31 for application against the qualified taxpayer’s “net tax” in any
32 taxable year, nor shall it be included in the amount of any credit
33 carryover under subdivision (j).

34 (3) (A) The amount received by a qualified taxpayer for unused
35 tax credits may not be less than 85 percent of the total face amount
36 of any unused tax credits sold.

37 (B) *Any difference in the price of the unused tax credits and the*
38 *total face amount of the unused tax credits shall not be considered*
39 *income of the buyer for tax purposes.*

1 (4) A qualified taxpayer may only sell up to the amount certified
2 as described in paragraph (2), but may not sell unused credits after
3 the end of the taxable year beginning after the calendar year in
4 which the qualified taxpayer was allocated the credit pursuant to
5 this section.

6 (5) Unused credits may be sold by a qualified taxpayer for any
7 taxable year beginning on or after January 1, 2010, but unused
8 credits may not be applied by a buyer against the “net tax,” as
9 defined by Section 17039, or the “tax,” as defined in Section 23036,
10 as the case may be, for any taxable year beginning before January
11 1, 2011.

12 (6) (A) A buyer of unused credits from a qualified taxpayer
13 may apply *all or any portion of* those credits against the “net tax,”
14 as defined by Section 17039, or the “tax,” as defined by Section
15 23036, as applicable, ~~for the taxable year of the buyer immediately~~
16 ~~preceding the taxable year in which purchased, in the taxable year~~
17 ~~in which purchased, or the immediately succeeding taxable year.~~
18 *for any of the following taxable periods:*

19 (i) *The taxable year of the buyer immediately preceding the*
20 *taxable year in which the unused credit was purchased.*

21 (ii) *The taxable year of the buyer in which the unused credit*
22 *was purchased.*

23 (iii) *The taxable year immediately following the taxable year*
24 *in which the unused credit was purchased.*

25 (B) *No deduction is allowed under this part or Part 11*
26 *(commencing with Section 23001) with respect to any amounts*
27 *paid by a buyer for unused credits pursuant to this section.*

28 (7) In no case may a buyer of unused credits from a qualified
29 taxpayer further sell or otherwise transfer those credits.

30 (8) Both the qualified taxpayer and buyer of unused credits shall
31 report to the Franchise Tax Board, in the form and manner specified
32 by the Franchise Tax Board, all required information regarding
33 the purchase and sale of unused credits under this section.

34 (9) Unused credits may not be claimed by a qualified buyer
35 against its “net tax,” as defined by Section 17039, or the “tax,” as
36 defined by Section 23036, as applicable, in any taxable year unless
37 the requirement in paragraph (2) has been satisfied.

38 (10) The Franchise Tax Board shall establish all necessary
39 procedures and rules for qualified taxpayers to sell tax credits
40 pursuant to this subdivision.

1 (11) Chapter 3.5 (commencing with Section 11340) of Part 1
2 of Division 3 of Title 2 of the Government Code does not apply
3 to any standard, criterion, procedure, determination, rule, notice,
4 or guideline established or issued by the Franchise Tax Board
5 pursuant to this subdivision.

6 (12) *The amount received by the qualified taxpayer from the*
7 *sale of any unused tax credits shall be treated as a separate item*
8 *of income of the qualified taxpayer from a source wholly within*
9 *this state for the taxable year in which the credit is sold.*

10 (i) Any deduction otherwise allowed under this part for any
11 amount paid or incurred by the taxpayer upon which the credit is
12 based shall be reduced by the amount of the credit allowed by this
13 section.

14 (j) Except as provided in paragraph (6) of subdivision (h) with
15 respect to the application of unused credits by a buyer, in the case
16 where the credit allowed under this section exceeds the “net tax,”
17 the excess may be carried over to reduce the “net tax” in the
18 following year, and the succeeding eight years if necessary, until
19 the credit has been exhausted.

20 (k) *The California Alternative Energy and Advanced*
21 *Transportation Financing Authority may confer and consult with*
22 *any other state agencies, boards, commissions, departments, and*
23 *authorities as necessary to implement this section.*

24 ~~(k)~~

25 (l) This section shall remain in effect only until December 1,
26 2013, and as of that date is repealed.

27 SEC. 5. Section 23613 is added to the Revenue and Taxation
28 Code, to read:

29 23613. (a) (1) For each taxable year beginning on or after
30 January 1, 2009, and before January 1, 2013, there shall be allowed
31 to a qualified taxpayer as a credit against the “tax,” as defined by
32 Section 23036, an amount equal to 20 percent of the qualified
33 amount.

34 (2) The credit allowed under this section shall be claimed by a
35 qualified taxpayer by making an irrevocable election to claim this
36 credit in lieu of the credit otherwise allowed pursuant to Section
37 23612 or Section 23614.

38 (b) For purposes of this section:

39 (1) “Cleantech” means technologies identified by the California
40 ~~Council on Science and Technology~~ *Alternative Energy and*

1 *Advanced Transportation Financing Authority*, the implementation
2 of which result in cleaner air and water, encourage the reuse of
3 materials, and result in reductions of emissions of greenhouse
4 gases, as that term is defined in subdivision (g) of Section 38505
5 of the Health and Safety Code, including, but not limited to, wind,
6 solar, biomass, and hydrogen technologies.

7 (2) “Qualified amount” means an amount determined in
8 accordance with Section 41 of the Internal Revenue Code, except:

9 (A) Qualified research shall include only research conducted
10 in this state.

11 (B) Section 41(a)(2) and Section 41(a)(3) of the Internal
12 Revenue Code shall not apply.

13 (3) “Qualified research” means research certified by the
14 ~~California Council on Science and Technology~~ *Alternative Energy*
15 *and Advanced Transportation Financing Authority* as cleantech
16 research, except that “qualified research” expenses include only
17 expenses for in-house research, within the meaning of Section
18 41(b)(2) of the Internal Revenue Code.

19 (4) (A) “Qualified taxpayer” means any taxpayer who, for the
20 taxable year, has received the certification described in subdivision
21 (e) from the ~~California Council on Science and Technology~~
22 *Alternative Energy and Advanced Transportation Financing*
23 *Authority* and otherwise satisfies the requirements of this section.

24 (B) A qualified taxpayer must be a business that has its principal
25 office located in California, the officers of which are domiciled in
26 California, and that, together with affiliates, has 100 or fewer
27 employees, and average annual gross receipts of ten million dollars
28 (\$10,000,000) or less over the previous three taxable years.

29 (C) (i) In the case of any passthrough entity, the determination
30 of whether a taxpayer is a qualified taxpayer under this section
31 shall be made at the entity level and any credit under this section
32 is not allowed to the passthrough entity, but shall be passed through
33 to the partners or shareholders in accordance with applicable
34 provisions of Part 10 (commencing with Section 17001) or Part
35 11 (commencing with Section 23001). For purposes of this
36 paragraph, “passthrough entity” means any entity taxed as a
37 partnership or “S” corporation.

38 (ii) In the case of an “S” corporation, the credit allowed under
39 this section shall not be used by an “S” corporation as a credit

1 against a tax imposed under Chapter 4.5 (commencing with Section
2 23800) of Part 11 of Division 2.

3 (c) Section 41 of the Internal Revenue Code shall apply, and is
4 modified as follows:

5 (1) The provisions of Section 41(c)(4) of the Internal Revenue
6 Code, relating to the election to use an alternate incremental credit,
7 shall not apply.

8 (2) Section 41(c)(7) of the Internal Revenue Code, relating to
9 gross receipts, is modified to take into account only those gross
10 receipts from the sale of property held primarily for sale to
11 customers in the ordinary course of the taxpayer's trade or business
12 that is delivered or shipped to a purchaser within this state,
13 regardless of freight on board point or any other condition of the
14 sale.

15 (3) Section 41(g) of the Internal Revenue Code, relating to
16 special rule for passthrough of credit, is modified by each of the
17 following:

18 (A) The last sentence shall not apply.

19 (B) If the amount determined under Section 41(a) of the Internal
20 Revenue Code for any taxable year exceeds the limitation of
21 Section 41(g) of the Internal Revenue Code, that amount may be
22 carried over to other taxable years under the rules of subdivision
23 (g), except that the limitation of Section 41(g) of the Internal
24 Revenue Code shall be taken into account in each subsequent
25 taxable year.

26 (4) Section 41(h) of the Internal Revenue Code, relating to
27 termination, shall not apply.

28 (d) In order to be eligible for the credit allowed under this
29 section, the qualified taxpayer shall do all of the following:

30 (1) (A) File an application for certification with the California
31 ~~Council on Science and Technology~~ *Alternative Energy and*
32 *Advanced Transportation Financing Authority*, in the form and
33 manner as prescribed by the California ~~Council on Science and~~
34 ~~Technology~~ *Alternative Energy and Advanced Transportation*
35 *Financing Authority*, that the taxpayer's research or planned
36 research is cleantech research.

37 (B) The application for certification of cleantech research under
38 subparagraph (A) must be filed with the California ~~Council on~~
39 ~~Science and Technology~~ *Alternative Energy and Advanced*
40 *Transportation Financing Authority* before the close of the taxable

1 year for which the credit allowed pursuant to this section will be
2 claimed.

3 (2) Maintain and provide, upon request by the Franchise Tax
4 Board, a copy of the application for certification and accompanying
5 materials provided to the ~~California Council on Science and~~
6 ~~Technology Alternative Energy and Advanced Transportation~~
7 ~~Financing Authority~~, along with substantiation, by adequate books
8 and records, or by sufficient corroborating evidence, that the
9 qualified research expenses on which the credit was calculated
10 were actually paid or incurred in the amount claimed, and that the
11 qualified research was performed in California.

12 (3) Provide a copy of the certification issued by the California
13 ~~Council on Science and Technology Alternative Energy and~~
14 ~~Advanced Transportation Financing Authority~~, as specified in
15 subdivision (e), upon request, to the Franchise Tax Board. If the
16 qualified taxpayer fails to provide the Franchise Tax Board with
17 a copy of the certification, the credit shall be disallowed and any
18 additional tax shall be assessed and collected pursuant to Section
19 19051.

20 (e) The ~~California Council on Science and Technology~~
21 ~~Alternative Energy and Advanced Transportation Financing~~
22 ~~Authority~~ shall do all of the following:

23 (1) Establish a procedure for qualified taxpayers to file with the
24 ~~California Council on Science and Technology Alternative Energy~~
25 ~~and Advanced Transportation Financing Authority~~ a written
26 application, on a form jointly prescribed by the ~~California Council~~
27 ~~on Science and Technology Alternative Energy and Advanced~~
28 ~~Transportation Financing Authority~~ and the Franchise Tax Board,
29 for certification of cleantech research. The application shall be
30 filed under penalty of perjury and shall include, but not be limited
31 to, the following information:

32 (A) A written plan of research to be conducted or documentation
33 of ongoing research.

34 (B) An application fee.

35 (C) Any other information deemed relevant by the California
36 ~~Council on Science and Technology Alternative Energy and~~
37 ~~Advanced Transportation Financing Authority~~.

38 (2) Determine and provide certification to applicants meeting
39 the requirements of this section.

1 (3) Process and approve, or reject all applications for
2 certification.

3 (4) No later than December 1, 31, 2008, the California Council
4 on Science and Technology *Alternative Energy and Advanced*
5 *Transportation Financing Authority* shall promulgate rules and
6 regulations necessary to establish procedures, processes,
7 requirements, and rules identified in or required to implement this
8 section. Rules and regulations may be adopted on an emergency
9 basis if necessary to meet the December 1, 31, 2008, deadline. *The*
10 *California Alternative Energy and Advanced Transportation*
11 *Financing Authority may amend these rules and regulations as*
12 *necessary.* The California Council on Science and Technology
13 *Alternative Energy and Advanced Transportation Financing*
14 *Authority* may adopt rules and regulations to more narrowly define
15 the terms listed in subdivision (b) to limit their meaning, but may
16 not expand the definition of any terms defined in subdivision (b).

17 (5) Provide a list, at least annually, to the Franchise Tax Board,
18 in the form and manner agreed upon by the Franchise Tax Board,
19 of the names, taxpayer identification numbers, including taxpayer
20 identification numbers of each partner or shareholder, as applicable,
21 of approved applicants for certification pursuant to this section.

22 (6) Provide, upon request from a taxpayer, a copy of a
23 certification previously issued to that taxpayer, if any.

24 (7) Identify and publish a list of technologies that comprise
25 cleantech research.

26 (f) (1) The election described in subdivision (a) shall be made
27 on or included with the timely filed original return of the qualified
28 taxpayer, and shall be irrevocable once made.

29 (2) No other credit or deduction may be allowed for the same
30 expenses upon which the credit provided for in subdivision (a) is
31 allowed.

32 (g) In the case where the credit allowed under this section
33 exceeds the “tax,” the excess may be carried over to reduce the
34 “tax” in the following year, and the succeeding eight years if
35 necessary, until the credit has been exhausted.

36 (h) *The California Alternative Energy and Advanced*
37 *Transportation Financing Authority may confer and consult with*
38 *any other state agencies, boards, commissions, departments, and*
39 *authorities as necessary to implement this section.*

40 (h)

1 (i) This section shall remain in effect only until December 1,
2 2013, and as of that date is repealed.

3 SEC. 6. Section 23614 is added to the Revenue and Taxation
4 Code, to read:

5 23614. (a) (1) For each taxable year beginning on or after
6 January 1, 2009, and before January 1, 2013, there shall be allowed
7 to a qualified taxpayer as a credit against the “tax,” as defined by
8 Section 23036, an amount equal to 10 percent of the qualified
9 amount, to the extent of a final allocation in accordance with this
10 section.

11 (2) A claim for the credit allowed pursuant to this section shall
12 be an election to claim this credit in lieu of the credit allowed
13 pursuant to Section 23612 or Section 23613.

14 (b) For purposes of this section:

15 (1) “Budget” means an estimate of all expenses expected to be
16 paid or incurred during the taxable year by the qualified taxpayer
17 for all qualified research purposes.

18 (2) “Cleantech” means technologies identified by the California
19 ~~Council on Science and Technology~~ *Alternative Energy and*
20 *Advanced Transportation Financing Authority*, the implementation
21 of which result in cleaner air and water, encourage the reuse of
22 materials, and result in reductions of emissions of greenhouse
23 gases, as that term is defined in subdivision (g) of Section 38505
24 of the Health and Safety Code, including, but not limited to, wind,
25 solar, biomass, and hydrogen technologies.

26 (3) (A) “Qualified amount” means an amount determined in
27 accordance with Section 41 of the Internal Revenue Code, for
28 qualified research conducted in this state.

29 (B) Paragraphs (2) and (3) of subdivision (a) of Section 41 of
30 the Internal Revenue Code shall not apply in computing the
31 qualified amount.

32 (4) (A) “Qualified research” means research certified by the
33 ~~California Council on Science and Technology~~ *Alternative Energy*
34 *and Advanced Transportation Financing Authority* as cleantech
35 research, except that “qualified research” expenses include only
36 expenses for in-house research, within the meaning of Section
37 41(b)(2) of the Internal Revenue Code, performed by employees
38 of the qualified taxpayer and do not include contract research
39 expenses, within the meaning of Section 41(b)(3) of the Internal
40 Revenue Code.

1 (B) In order to receive an allocation of credit under this section
2 the following conditions shall also be satisfied:

3 (i) The qualified taxpayer shall have a minimum budget of three
4 hundred thousand dollars (\$300,000) for qualified research.

5 (ii) The actual expenses for qualified research conducted during
6 the qualified taxpayer's taxable year must meet or satisfy the
7 minimum budget amount required by clause (i) at the time of
8 application to the ~~California Council on Science and Technology~~
9 *Alternative Energy and Advanced Transportation Financing*
10 *Authority* for a final allocation.

11 (5) (A) "Qualified taxpayer" means a taxpayer who, for the
12 taxable year, has received a final allocation of credit from the
13 ~~California Council on Science and Technology~~ *Alternative Energy*
14 *and Advanced Transportation Financing Authority* pursuant to
15 subdivision (e) and who otherwise satisfies the requirements of
16 this section.

17 (B) A qualified taxpayer must be a business that has its principal
18 office located in California, the officers of which are domiciled in
19 California, and that, together with affiliates, has 100 or fewer
20 employees, and average annual gross receipts of ten million dollars
21 (\$10,000,000) or less over the previous three taxable years.

22 (C) (i) In the case of any passthrough entity, the determination
23 of whether a taxpayer is a qualified taxpayer under this section
24 shall be made at the entity level and any credit under this section
25 is not allowed to the passthrough entity, but shall be passed through
26 to the partners or shareholders in accordance with applicable
27 provisions of Part 10 (commencing with Section 17001) or Part
28 11 (commencing with Section 23001). For purposes of this
29 paragraph, "passthrough entity" means any entity taxed as a
30 partnership or "S" corporation.

31 (ii) In the case of an "S" corporation, the credit allowed under
32 this section shall not be used by an "S" corporation as a credit
33 against a tax imposed under Chapter 4.5 (commencing with Section
34 23800) of Part 11 of Division 2.

35 (6) "Unused credit" means an amount of tax credit reflected in
36 a final allocation to a qualified taxpayer pursuant to this section
37 that has not been applied to reduce the "tax," as defined by Section
38 23036, in any taxable year.

39 (c) Section 41 of the Internal Revenue Code shall apply, and is
40 modified as follows:

1 (1) The provisions of Section 41(c)(4) of the Internal Revenue
2 Code, relating to the election to use an alternate incremental credit,
3 shall not apply.

4 (2) Section 41(c)(7) of the Internal Revenue Code, relating to
5 gross receipts, is modified to take into account only those gross
6 receipts from the sale of property held primarily for sale to
7 customers in the ordinary course of the taxpayer's trade or business
8 that is delivered or shipped to a purchaser within this state,
9 regardless of freight on board point or any other condition of the
10 sale.

11 (3) Section 41(g) of the Internal Revenue Code, relating to
12 special rule for passthrough of credit, is modified by each of the
13 following:

14 (A) The last sentence shall not apply.

15 (B) If the amount determined under Section 41(a) of the Internal
16 Revenue Code for any taxable year exceeds the limitation of
17 Section 41(g) of the Internal Revenue Code, that amount may be
18 carried over to other taxable years under the rules of subdivision
19 (j) except that the limitation of Section 41(g) of the Internal
20 Revenue Code shall be taken into account in each subsequent
21 taxable year.

22 (4) Section 41(h) of the Internal Revenue Code, relating to
23 termination, shall not apply.

24 (d) In order to be eligible for the credit authorized by this
25 section, the qualified taxpayer shall do all of the following:

26 (1) (A) File an application for preliminary allocation of the tax
27 credit with the ~~California Council on Science and Technology~~
28 *Alternative Energy and Advanced Transportation Financing*
29 *Authority*, in the form and manner as prescribed by the California
30 ~~Council on Science and Technology~~ *Alternative Energy and*
31 *Advanced Transportation Financing Authority*, for allocation of
32 credit.

33 (B) The application for allocation of credit referenced in
34 subparagraph (A) must be filed with the California ~~Council on~~
35 ~~Science and Technology~~ *Alternative Energy and Advanced*
36 *Transportation Financing Authority* before the close of the taxable
37 year for which the credit allowed pursuant to this section will be
38 claimed.

39 (2) Within 90 days of the end of the taxpayer's taxable year,
40 file an application with the California ~~Council on Science and~~

1 ~~Technology~~ *Alternative Energy and Advanced Transportation*
2 *Financing Authority* for final allocation of the credit based upon
3 the taxpayer's conduct of qualified research during the taxable
4 year.

5 (3) File an application with the California ~~Council on Science~~
6 ~~and Technology~~ *Alternative Energy and Advanced Transportation*
7 *Financing Authority* for certification of the amount of unused credit
8 which may be sold pursuant to subdivision (h).

9 (4) Provide the California ~~Council on Science and Technology~~
10 *Alternative Energy and Advanced Transportation Financing*
11 *Authority* with substantiation, by adequate books and records, or
12 by sufficient corroborating evidence, that the qualified research
13 expenses on which the credit was calculated were actually paid or
14 incurred in the amount claimed, and that the qualified research
15 was performed in California.

16 (e) The California ~~Council on Science and Technology~~
17 *Alternative Energy and Advanced Transportation Financing*
18 *Authority* shall do all of the following:

19 (1) (A) Establish procedures for qualified taxpayers to file with
20 the California ~~Council on Science and Technology~~ *Alternative*
21 *Energy and Advanced Transportation Financing Authority* a
22 written application, on a form jointly prescribed by the California
23 ~~Council on Science and Technology~~ *Alternative Energy and*
24 *Advanced Transportation Financing Authority* and the Franchise
25 Tax Board, for the following purposes:

26 (i) Certification of cleantech research.

27 (ii) Preliminary allocation of credit.

28 (iii) Final allocation of credit.

29 (iv) Certification of the amount of credit for sale pursuant to
30 subdivision (h).

31 (B) The applications identified in subparagraph (A) shall be
32 filed under penalty of perjury. The application for certification and
33 allocation of credit shall include, but not be limited to, the
34 following information:

35 (i) A written budget and plan for qualified research to be
36 conducted, along with documentation of any ongoing research that
37 may be determined to be qualified research.

38 (ii) An application fee.

1 (iii) Any other information deemed relevant by the California
 2 ~~Council on Science and Technology Alternative Energy and~~
 3 ~~Advanced Transportation Financing Authority.~~

4 (2) Allocate tax credits to qualified taxpayers, subject to the
 5 aggregate allocation limits in subdivision (f), and which shall not
 6 exceed the lesser of any of the following:

7 (A) The amount of the credit preliminarily allocated to the
 8 qualified taxpayer by the California ~~Council on Science and~~
 9 ~~Technology Alternative Energy and Advanced Transportation~~
 10 ~~Financing Authority~~ based on the initial application for preliminary
 11 allocation of tax credit.

12 (B) The amount of the credit calculated based on the actual costs
 13 of qualified research.

14 (C) One million dollars (\$1,000,000) per qualified taxpayer per
 15 qualified year.

16 (3) Determine and provide certification of the amount of unused
 17 credit available for sale pursuant to subdivision (h).

18 (4) (A) Accept and evaluate applications for certification and
 19 allocation. If the aggregate amount of tax credit applications
 20 exceeds the amount of credit available for allocation, credit shall
 21 be allocated on a first-come-first-served basis as determined by
 22 the order in which complete, approved applications for allocation
 23 are received.

24 (B) No certifications or allocations of credit may be made for
 25 activity conducted in a calendar year prior to the calendar year in
 26 which an application for certification and allocation is made.

27 (5) Issue a certificate to the qualified taxpayer setting forth the
 28 name of the qualified taxpayer and the total amount of the tax
 29 credit allocated to the qualified taxpayer.

30 (6) Issue a certificate to the qualified taxpayer setting forth the
 31 name of the qualified taxpayer and the total amount of unused
 32 credit available for sale pursuant to subdivision (h).

33 (7) (A) No later than December ~~1, 31, 2008~~, the California
 34 ~~Council on Science and Technology Alternative Energy and~~
 35 ~~Advanced Transportation Financing Authority~~ shall promulgate
 36 rules and regulations necessary to establish procedures, processes,
 37 requirements, and rules identified in or required to implement this
 38 section. Rules and regulations may be adopted on an emergency
 39 basis if necessary to meet the December ~~1, 31, 2008~~, deadline. The
 40 California ~~Council on Science and Technology Alternative Energy~~

1 *and Advanced Transportation Financing Authority* may amend
2 these rules and regulations as necessary. The California ~~Council~~
3 ~~on Science and Technology~~ *Alternative Energy and Advanced*
4 *Transportation Financing Authority* may adopt rules and
5 regulations to more narrowly define the terms listed in subdivision
6 (b) to limit their meaning, but may not expand the definition of
7 any terms defined in subdivision (b).

8 (B) Develop guidelines, in consultation with the Franchise Tax
9 Board, for review of applications for final confirmation and of
10 credit allocations supporting materials in a manner consistent with
11 generally accepted accounting principles.

12 (8) Provide a list, at least annually, to the Franchise Tax Board,
13 in the form and manner agreed upon by the Franchise Tax Board,
14 information including, but not limited to, the following:

15 (A) The names, taxpayer identification numbers, including
16 taxpayer identification numbers of each partner or shareholder, as
17 applicable, of approved applicants for allocation of credit pursuant
18 to this section.

19 (B) The amount of final credit allocation.

20 (C) The amount of unused credit certified for sale pursuant to
21 subdivision (h).

22 (f) The aggregate amount of credits that may be allocated in
23 any calendar year pursuant to this section and Section 17053.14
24 shall be an amount not to exceed the sum of all of the following:

25 (1) Twelve million five hundred thousand dollars (\$12,500,000)
26 for each calendar quarter.

27 (2) The unallocated credit, if any, for the preceding calendar
28 quarter.

29 (g) No other credit or deduction may be allowed for the same
30 expenses upon which the credit provided for in subdivision (a) is
31 allowed.

32 (h) (1) Notwithstanding any provisions of law to the contrary,
33 and except as otherwise provided in this section, a qualified
34 taxpayer may elect to sell unused credits to a buyer to claim against
35 its “tax,” as defined by Section 23036, or its “net tax,” as defined
36 in Section 17039, as the case may be, in any taxable year.

37 (2) (A) The amount of the unused credit that may be sold by a
38 qualified taxpayer shall be certified by the California ~~Council~~
39 ~~on Science and Technology~~ *Alternative Energy and Advanced*
40 *Transportation Financing Authority* prior to sale.

1 (B) In any case where an unused credit has been sold under the
2 authority of this subdivision, the qualified taxpayer shall reduce
3 the amount of its unused credit by the face amount of the unused
4 credits sold, and the amount of that reduction shall not be available
5 for application against the qualified taxpayer's "tax" in any taxable
6 year, nor shall it be included in the amount of any credit carryover
7 under subdivision (j).

8 (3) (A) The amount received by a qualified taxpayer for unused
9 tax credits may not be less than 85 percent of the total face amount
10 of any unused tax credits sold.

11 (B) *Any difference in the price of the unused tax credits and the*
12 *total face amount of the unused tax credits shall not be considered*
13 *income of the buyer for tax purposes.*

14 (4) A qualified taxpayer may only sell up to the amount certified
15 as described in paragraph (2), but may not sell unused credits after
16 the end of the taxable year beginning after the calendar year in
17 which the qualified taxpayer was allocated the credit pursuant to
18 this section.

19 (5) Unused credits may be sold by a qualified taxpayer for any
20 taxable year beginning on or after January 1, 2010, but unused
21 credits may not be applied by a buyer against the "net tax," as
22 defined by Section 17039, or the "tax," as defined in Section 23036,
23 as the case may be, for any taxable year beginning before January
24 1, 2011.

25 (6) (A) A buyer of unused credits from a qualified taxpayer
26 may apply *to all or portion of* those credits against the "net tax,"
27 as defined by Section 17039, or the "tax," as defined by Section
28 23036, as applicable, ~~for the taxable year of the buyer immediately~~
29 ~~preceding the taxable year in which purchased, in the taxable year~~
30 ~~in which purchased, or the immediately succeeding taxable year.~~
31 *for any of the following taxable periods:*

32 (i) *The taxable year of the buyer immediately preceding the*
33 *taxable year in which the unused credit was purchased.*

34 (ii) *The taxable year of the buyer in which the unused credit*
35 *was purchased.*

36 (iii) *The taxable year immediately following the taxable year*
37 *in which the unused credit was purchased.*

38 (B) *No deduction is allowed under this part or Part 11*
39 *(commencing with Section 23001) with respect to any amounts*
40 *paid by a buyer for unused credits pursuant to this section.*

1 (7) In no case may a buyer of unused credits from a qualified
2 taxpayer further sell or otherwise transfer those credits.

3 (8) Both the qualified taxpayer and buyer of unused credits shall
4 report to the Franchise Tax Board, in the form and manner specified
5 by the Franchise Tax Board, all required information regarding
6 the purchase and sale of unused credits under this section.

7 (9) Unused credits may not be claimed by a qualified buyer
8 against its “tax,” as defined by Section 23036, or the “net tax,” as
9 defined by Section 17039, as applicable, in any taxable year unless
10 the requirement in paragraph (2) has been satisfied.

11 (10) The Franchise Tax Board shall establish all necessary
12 procedures and rules for qualified taxpayers to sell tax credits
13 pursuant to this subdivision.

14 (11) Chapter 3.5 (commencing with Section 11340) of Part 1
15 of Division 3 of Title 2 of the Government Code does not apply
16 to any standard, criterion, procedure, determination, rule, notice,
17 or guideline established or issued by the Franchise Tax Board
18 pursuant to this subdivision.

19 *(12) The amount received by the qualified taxpayer from the*
20 *sale of any unused tax credits shall be treated as a separate item*
21 *of nonbusiness income of the qualified taxpayer from a source*
22 *wholly within this state for the taxable year in which the credit is*
23 *sold.*

24 (i) Any deduction otherwise allowed under this part for any
25 amount paid or incurred by the taxpayer upon which the credit is
26 based shall be reduced by the amount of the credit allowed by this
27 section.

28 (j) Except as provided in paragraph (6) of subdivision (h) with
29 respect to the application of unused credits by a buyer, in the case
30 where the credit allowed under this section exceeds the “net tax,”
31 the excess may be carried over to reduce the “net tax” in the
32 following year, and the succeeding eight years if necessary, until
33 the credit has been exhausted.

34 *(k) The California Alternative Energy and Advanced*
35 *Transportation Financing Authority may confer and consult with*
36 *any other state agencies, boards, commissions, departments, and*
37 *authorities as necessary to implement this section.*

38 ~~(k)~~

39 (l) This section shall remain in effect only until December 1,
40 2013, and as of that date is repealed. However, any unused credit

1 may be carried over and used after that repeal date in accordance
2 with subdivision (i).

3 SEC. 7. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

12 SEC. 8. This act provides for a tax levy within the meaning of
13 Article IV of the Constitution and shall go into immediate effect.